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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,530	11/12/2003	Jayshree Seth	58313US003	6886

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EXAMINER

EASHOO, MARK

ART UNIT	PAPER NUMBER
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1732

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,530

Applicant(s)

SETH ET AL.

Examiner

Mark Eashoo, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 1-19 and 27-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-26 and 53-60 is/are rejected.
- 7) ☒ Claim(s) 25, 26 and 60 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date var.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Election/Restrictions***

Applicant's election with traverse of claim group II, claims 20-26 and 53-60, in the reply filed on 23-MAR-2005 is acknowledged. The traversal is on the ground(s) that there is no burden on the office because the examination of each claim grouping would require substantial duplication of work. This is not found persuasive because applicant's traverse fails to provide evidence, rather than mere speculation, that there is no burden on the Office and completely ignores that product claims are examined on the specific claimed structure of the product and not the process of making the article whereas process claims are examined on the specifics of stepwise limitations recited in the process.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-19 and 27-52 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected claim grouping, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 23-MAR-2005.

Claim Objections

Claims 25, 26, and 60 are objected to because of the following informalities: the claims do not end with a period. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-25 and 53-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Brumlik (US Pat. 4,001,366).

Brumlik teaches the claimed process of forming polymeric net-like structure (Fig. 6b), comprising: extruding a polymer film having a plurality of strand/rib on at least one surface (Fig. 11); cutting the strand structures at an angle to the strand/ribs thereby forming cut portions (Figs. 2, 5, and 6a); stretching/orienting the film to separate the cut portions and form discrete second strands having stems thereon (4:66-5:13 and Fig. 6b); stem structures with hook elements on first and second faces of the film (Fig. 4b); and coextruding flexible/elastic and stiff/inelastic materials in desired locations, base, stem/strand, or head, to meet the needs of a particular fastener application (6:34-51 and Fig. 8).

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It is inherent that the structure of Fig. 6b was stretched in two directions, machine and transverse, to form the netting as shown otherwise the proportion of the perforation (elements 25 or 28) would change substantially.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over by Brumlik (US Pat. 4,001,366) in view of de Navas Albareda (US Pat. 4,056,593).

Brumlik teaches the basic claimed process of forming polymeric net-like structure as set forth above. Brumlik does not teach heating hook elements following the formation thereof. Nonetheless, de Navas Albareda teaches heating hook elements following the formation thereof (Fig. 1, element 17). Brumlik and de Navas Albareda are combinable because they are from the same field of endeavor, namely, forming fastener products. At the time of invention a person of ordinary skill in the art would have found it obvious to have heated the hook elements, as taught by de Navas Albareda, in the process of Brumlik, since de Navas Albareda suggests that such heating facilitates stretching of the extrudate.

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). However, the reference(s) teaches all of the claimed ingredients, process steps, and process conditions. Therefore, the claimed effects and physical properties, such as altering the shape of dimensions of the hook elements by heating, would inherently be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these claimed process steps.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
(see attached form PTO-892).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 20 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 19 of copending Application No. 10/863,720. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to extruding a structure with ridges/strand structures thereon followed by cutting and orienting of the structure to form a netting product.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 21-26 and 53-60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 19-32 of copending Application No. 10/863,720 in view of Brumlik (US Pat. 4,001,366) and de Navas Albareda (US Pat. 4,056,593). Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to extruding a structure with ridges/strand structures thereon followed by cutting and orienting of the structure to form a netting product. Copending Application No. 10/863,720 does not teach all the specific claimed steps in claims 21-25. Nonetheless, Brumlik teaches the claimed process of forming polymeric net-like structure (Fig. 6b), comprising: extruding a polymer film having a plurality of strand/rib on at least one surface (Fig. 11); cutting the strand structures at an angle to the strand/ribs thereby forming cut portions (Figs. 2, 5, and 6a); stretching/orienting the film to separate the cut portions and form discrete second strands having stems thereon (4:66-5:13 and Fig. 6b); stem structures with hook elements on first and second faces of the film (Fig. 4b); and coextruding

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flexible/elastic and stiff/inelastic materials in desired locations, base, stem/strand, or head, to meet the needs of a particular fastener application (6:34-51 and Fig. 8). It is inherent that the structure of Fig. 6b was stretched in two directions, machine and transverse, to form the netting as shown otherwise the proportion of the perforation (elements 25 or 28) would change substantially. As such a person of ordinary skill in the art would have found it obvious to have formed the fastener product by the steps taught by Brumlik, in the process of copending Application No. 10/863,720 claims 19-32, and would have been motivated to do so because Brumlik suggest that these processing steps, such as forming a co-extruded structure with hook elements on both surfaces and stretching in two directions, forms a desirable product tailored to the needs of particular fastener applications.

Copending Application No. 10/863,720 claims 19-32 do not teach heating hook elements following the formation thereof. Nonetheless, de Navas Albareda teaches heating hook elements following the formation thereof (Fig. 1, element 17). At the time of invention a person of ordinary skill in the art would have found it obvious to have heated the hook elements, as taught by de Navas Albareda, in the process of copending Application No. 10/863,720 claims 19-32, since de Navas Albareda suggests that such heating facilitates stretching of the extrudate.

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). However, the reference(s) teaches all of the claimed ingredients, process steps, and process conditions. Therefore, the claimed effects and physical properties, such as altering the shape of dimensions of the hook elements by heating, would inherently be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these claimed process steps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 20-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-26 of copending Application No. 10/376,979. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to extruding a structure with ridges/strand structures thereon followed by cutting, orienting, and heat treating of the structure to form a netting product.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Claims 53-60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-26 of copending Application No. 10/376,979. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to extruding a structure with ridges/strand structures thereon followed by cutting, orienting, and heat treating of the structure to form a netting product. Copending Application No. 10/376,979 does not teach forming a co-extruded structure having elastic and inelastic portions. Nonetheless, Brumlik teaches forming polymeric net-like structure (Fig. 6b), having coextruded flexible/elastic and stiff/inelastic materials in desired locations, base, stem/strand, or head (6:34-51 and Fig. 8). As such a person of ordinary skill in the art would have found it obvious to have formed a co-extruded fastener product as taught by Brumlik, in the process of copending Application No. 10/376,979, and would have been motivated to do so because Brumlik suggest that such co-extrusion allows formation of a desirable product tailored to the needs of particular fastener applications.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 21-26 and 53-60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-32 of copending Application No. 10/780,396 in view of Brumlik (US Pat. 4,001,366) and de Navas Albareda (US Pat. 4,056,593). Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to extruding a structure with ridges/strand structures thereon followed by cutting and orienting of the structure to form a fastener product. Copending Application No. 10/780,396 does not teach forming a netting product or a co-extruded product. Nonetheless, Brumlik teaches the claimed process of forming polymeric net-like structure (Fig. 6b) and coextruding flexible/elastic and stiff/inelastic materials in desired locations, base, stem/strand, or head (6:34-51 and Fig. 8). It is inherent that the structure of Fig. 6b was stretched in two directions, machine and transverse, to form the netting as shown otherwise the proportion of the perforation (elements 25 or 28) would change substantially. As such a person of ordinary skill in the art would have found it obvious to have formed the fastener product by the steps taught by Brumlik, in the process of copending Application No. 10/780,396 claims 20-32, and would have been motivated to do so because Brumlik suggest that these processing steps, such as forming a co-extruded structure with hook elements on both surfaces and stretching in two directions, forms a desirable product tailored to the needs of particular fastener applications.

Copending Application No. 10/780,396 claims 20-32 do not teach heating hook elements following the formation thereof. Nonetheless, de Navas Albareda teaches heating hook elements following the formation thereof (Fig. 1, element 17). At the time of invention a person of ordinary skill in the art would have found it obvious to have heated the hook elements, as taught by de Navas Albareda,

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in the process of copending Application No. 10/863,720 claims 19-32, since de Navas Albareda suggests that such heating facilitates stretching of the extrudate.

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). However, the reference(s) teaches all of the claimed ingredients, process steps, and process conditions. Therefore, the claimed effects and physical properties, such as altering the shape of dimensions of the hook elements by heating, would inherently be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects by carrying out only these claimed process steps.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 21-26 and 53-60 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-25 of copending Application No. 10/619,048 in view of Brumlik (US Pat. 4,001,366). Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to extruding a structure with ridges/strand structures thereon followed by cutting, orienting, and heat treating of the structure to form a fastener product. Copending Application No. 10/619,048 does not teach forming a netting product or a co-extruded product. Nonetheless, Brumlik teaches the claimed process of forming polymeric net-like structure (Fig. 6b) and coextruding flexible/elastic and stiff/inelastic materials in desired locations, base, stem/strand, or head (6:34-51 and Fig. 8). It is inherent that the structure of Fig. 6b was stretched in two directions, machine and transverse, to form the netting as shown otherwise the proportion of the perforation (elements 25 or 28) would change substantially. As such a person of ordinary skill in the art would have found it obvious to have formed the fastener product by the steps taught by Brumlik, in the process of copending Application No. 10/619,048 claims 20-25, and would have been motivated to do so because Brumlik suggest that these processing steps, such as forming a co-extruded structure with hook elements on both surfaces and stretching in two directions, forms a desirable product tailored to the needs of particular fastener applications.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Eashoo, Ph.D. whose telephone number is (571) 272-1197. The examiner can normally be reached on 7am-3pm EST, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Eashoo, Ph.D.
Primary Examiner
Art Unit 1732

04/26/05

4 June 2005
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